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In re Application of :
KUHN et al. :
Application No.: 10/528,169 :
PCT No.: PCT/EP02/06649 : DECISION
Int. Filing Date: 17 June 2002 :
Priority Date: 21 June 2001 : ON PETITION UNDER
Docket No.: H01.2-11410 :
For: A DECIVE FOR THICKENING : 37 CFR 1.10(e)
OR DEHYDRATING SLUDGES, :
SEDIMENTS FROM WATERS ... :

This decision is in response to applicant's "Petition Pursuant to 37 C.F.R. 1.10(e)" filed in the United States Patent and Trademark Office on 10 March 2005. No petition fee is required.

BACKGROUND

On 17 June 2002, applicant filed international application PCT/EP02/06649. The international application claimed priority to a foreign application having a priority date of 21 June 2001. The deadline for entry into the national stage in the United States was 21 December 2003.

On 10 March 2005, applicant filed a "Facsimile Transmittal Letter" accompanied by the petition addressed here, an Express Mailing label, a transmittal letter (Form PTO-1390), and a two-page copy of another transmittal letter dated 18 December 2003. The 18 December 2003 transmittal sheet lists a 13 page English translation as having been provided. However, the subsequently filed 10 March 2005 petition does not list a translation of the international application and such a translation has not been provided. Furthermore, the petition filed pursuant to 37 C.F.R. 1.10(e) does not claim to have originally provided a translation.

DISCUSSION

37 CFR 1.10(e) states:

(e) Any person mailing correspondence addressed as set out in Sec. 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the

Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Items (1), (2), (3) and (4) have been satisfied as to those papers provided. With regard to item (1) the petition was filed promptly. With regard to items (2)-(4) it is noted that petition does not expressly state that the "copies" of the documents attached to the petition are true copies of those papers and fees originally filed on 18 December 2003. Given the context of the use of the term "copies" in the petition, counsel's statement is construed as representing that the attached copies are in fact true copies of those papers and fees originally filed on 18 December 2003. If this interpretation is incorrect, applicants must **IMMEDIATELY** notify the Office of PCT Legal administration of such fact. As such it is clear that the Express Mail mailing label number was placed on the correspondence prior to mailing. In addition, the copy of the Express Mail label shows a date in of 18 December 2003. The copies of the papers attached to the 10 March 2005 petition are accepted as having been submitted on 18 December 2003.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.10(e) is GRANTED. The copies of the Form PTO-1390, the preliminary amendment and the "Transmittal Letter" will be accepted as filed on 18 December 2003. Pursuant to authorization provided on Form PTO-1390 counsel's deposit account will be charged the Basic National Fee.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, in accordance with this decision, including issuance of a Notification of Missing Requirements indicating that an oath or declaration of the inventors, a translation into the English language of the international application, the surcharge for late filing of the oath or declaration and the processing fee for the late filing of the English translation are required.



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